



**COMPETITION COMMISSION OF INDIA**

(Case No. 59 of 2013)

In Re:

Mr. Bijay Poddar

... Informant

And

M/s Coal India Ltd and its subsidiaries

...Opposite Party

QUORAM:

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M.L. Tayal  
Member

Mr. Justice (Retd.) S.N. Dhingra  
Member

Mr. S.L. Bunker  
Member

Present: Mr. Santosh Kumar, Advocate alongwith informant in person.

**Order under Section 26(1) of the Competition Act, 2002**

The present information was filed by against the Opposite Party [OP (OP includes M/s Coal India and its subsidiaries)] under the provisions of section 19(1) of the Competition Act 2002 (herein



after referred as “the Act”) alleging *inter-alia* contravention of Section 4 of the Act.

2. The OP introduced a scheme called Spot e-Auction Scheme 2007 (“the scheme”) which was published on the official website of the OP ([www.coalindia.in](http://www.coalindia.in)) for facilitating the country wide ranging access to book coal online for all sections of coal buyers enabling them to buy coal through a simple, transparent and consumer friendly system of marketing and distribution of coal. The informant contended that actually this scheme caused maximum loss to the customers in all respects and as such said scheme was against the interest of consumers. According to the terms and conditions of the scheme, initially all the bidders who bid for coal through the spot e - auction route had to furnish a non-interest bearing Earnest Money Deposit (EMD) at the rate of Rs. 200/- per tonne. This amount of EMD was enhanced to Rs. 500/- per tonne without reflecting the enhancement in the terms and conditions supplied.

3. The informant alleged that the Clauses 4.2 and 9.2 of the said scheme were violative of the provision of the Act. Clause 4.2 stated that before participating in E-auction, bidders were to satisfy themselves with the quality of coal being offered from a source while Clause 9.2 stated that if the successful bidder did not lift the booked quantity within the stipulated validity period, the proportionate security deposit @ Rs. 200/- per tonne (as converted



from the EMD amount) for the un-lifted quantity would be forfeited. However such forfeiture would not take place if the coal company failed to offer the whole or part of the successful bid quantity within the validity period. The informant averred that it was wrong and unfair on the part of OP to have a one sided condition of forfeiture of EMD if the bidders/ buyers of coal did not lift the coal while OP had not to pay any penalty on failure to supply coal. OP had simply to refund the value of coal deposited by bidder without paying any compensation to the buyers/bidder.

4. The informant prayed to the Commission to direct the OP to pay penalty of Rs. 500/- per tonne and interest @ 15 % on money deposited from date of receipt of money till date of refund with compensation for non- supply of coal as bidders/ buyers have to buy coal from the open market at high prices. Informant also prayed for imposing penalty upon OP for misguiding investors and to declare the scheme illegal.
5. From the facts of the case, it is evident that the relevant product market would be 'sale of coal through e-auction route' and since OP was auctioning it for the whole of country which means that the relevant geographic area would be entire India. Thus, the relevant market can be considered as "sale of coal through e-auction route in India".



6. By virtue of Coal Mines (Nationalization) Act, 1973, coal mines were taken over by the Central Government. Subsequently, on creation of OP in the year 1975, the same were vested in it. OP (including its subsidiaries) is consequently having a statutory monopoly in the production and distribution of coal in India. As such, the OP *prima facie* appeared to be a sole and dominant player in the market of sale of coal through e- auction route in India.

7. Section 4 (1) of the Competition Act prohibits abuse of dominant position by any enterprise. Section 4(2) provides as under:-

“There shall be an abuse of dominant position (under sub-section (1). If an enterprise or a group

- a) Directly or indirectly imposes unfair or discriminatory
  - i. Condition in purchase or sale of goods or services; or
  - ii. Price in purchase or sale (including predatory price) of goods or service.”
- b) Limits or restricts -
  - i. Production of goods or provision of services or market therefor; or
  - ii. Technical or scientific development relating to goods or services to the Prejudice of consumers; or
- c) Indulges in practice or practices resulting in denial of market access [in any manner]; or



- d) Makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
  - e) Uses its dominant position in one relevant market to enter into, or protect, other relevant market.
8. It is apparent from reading of section 4 (2) (a) (i) that if a dominant player directly or indirectly imposes unfair condition in purchase or sale of goods or service, it amounts to abuse. In the present case, the terms & conditions of e-auction placed on record by the informant show that while in case of a bidder's failure to lift coal, the bidder had to suffer a penalty of certain amount per tone of the coal for which he had given bid, but in case despite acceptance of the bid, the opposite party failed to deliver the coal, then opposite party had not to suffer any penalty and was merely to refund the deposited sale price amount without interest to the bidder. In a fair contract, the failure to perform the contract attracts penalties for both the parties. In this case, the opposite party provided in the bid document a penalty for failure of performance of contract on the part of successful bidder alone and there was no provision for penalty for non-performance of the contract on the part of the opposite party. Since the contract in this case after e-auction would be one of sale of coal put on auction, the failure on the part of opposite party can only be under two circumstances (i) there was no coal for auction but it was auctioned (ii) that there was coal on stock put on auction but the opposite party refused to fulfil its part



for one or the other reason. Such a condition in the contract which gives liberty to one party to breach the contract at the peril of the other party and at the cost of the other party, *prima facie* is an unfair condition. Since the opposite party is in a dominant position, this *prima facie* amount to abuse of dominant position and would attract provision of section 4(2) of the Act.

9. The other allegation made by informant is in respect of bidder getting satisfied about the quality of coal through source. We think that those who bid for these auctions normally keep themselves informed about the quality of coal being dug out from these mines and they have their sources who keep them informed about the quality of available coal. This allegation does not raise any competition issue.
10. In view of the foregoing discussion, the Commission is of the opinion *prima facie* there appears to be a contravention of section 4 of the Act and it was a fit case to be investigated by DG.
11. Accordingly, the Commission directs the Director General (DG) to cause an investigation to be made into the matter under Section 26(1) of the Act for violations of the provisions of the Act and to complete the investigation within a period of 60 days from the receipt of the order and send his report.



12. Nothing stated in this order shall tantamount to a final expression of opinion on merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

New Delhi  
Date: 18/11/2013

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

Sd/-  
(M.L.Tayal)  
Member

Sd/-  
(Justice (Retd.) S.N. Dhingra)  
Member

Sd/-  
(S.L. Bunker)  
Member